

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JOSEPH CALDWELL,

Plaintiff,

vs.

No. CIV 20-0003 JB/JFR

UNIVERSITY OF NEW MEXICO  
BOARD OF REGENTS; NASHA  
TORREZ; LOBO DEVELOPMENT  
CORPORATION; ACC OP (UNM  
SOUTH) LLC and EDDIE NUÑEZ,

Defendants.

**ORDER**<sup>1</sup>

**THIS MATTER** comes before the Court on Defendant Nasha Torrez's Motion for Judgment on the Pleadings, filed April 29, 2020 (Doc. 43) ("Motion"). The primary issues are: (i) whether Plaintiff Joseph Caldwell has alleged facts sufficient to state a due process interest in (a) his continued enrollment at Defendant University of New Mexico ("UNM"); (b) playing basketball for UNM; (c) his reputation; and (d) his future professional basketball career; (ii) whether UNM's actions comported with procedural due process under the Constitution of the United States of America when Defendant Nasha Torrez, UNM's Dean of Students, banned Caldwell from campus; (iii) whether Caldwell can sue Torrez for damages under 42 U.S.C. § 1983, because Caldwell's procedural due process rights were clearly established; (iv) whether Torrez violated procedural due process, because Torrez' actions -- banning temporarily Caldwell from

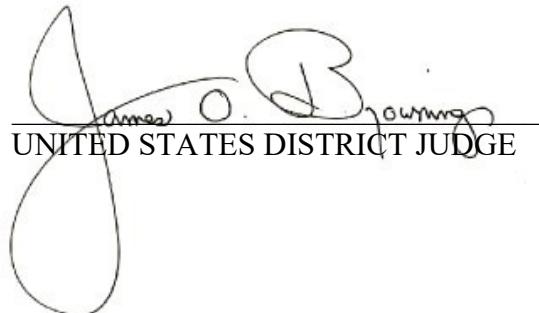
---

<sup>1</sup>This Order disposes of Defendant Nasha Torrez's Motion for Judgment on the Pleadings, filed April 29, 2020 (Doc. 43). The Court will at a later date, however, issue a Memorandum Opinion more fully detailing its rationale for this decision.

campus -- shock the judicial conscience; and (v) whether the Court should grant Caldwell leave to amend his Complaint rather than granting the Motion. The Court concludes that (i) Caldwell alleges sufficiently that he has a due process property interest in his continued education at UNM, and Caldwell alleges sufficiently that Torrez interfered with this interest by temporarily banning Caldwell from certain campus property, including on-campus classes and his housing, but Caldwell does not have a due process interest in playing basketball for UNM, his reputation, or his future professional basketball career; (ii) UNM's actions comported with procedural due process when Torrez banned temporarily Caldwell from campus, because, although the campus ban is more than a de minimis taking of Caldwell's interest in his continued education, none of UNM's hearing procedures placed Caldwell at risk of erroneous deprivation, and because UNM has a legitimate interest in maintaining a safe learning environment and preserving its limited administrative resources; (iii) Caldwell cannot sue Torrez for damages under 42 U.S.C. § 1983, because Caldwell's procedural due process rights were not clearly established; (iv) Torrez did not violate Caldwell's substantive due process rights, because banning temporarily Caldwell from campus does not shock the judicial conscience; and (v) it is futile to allow Caldwell to amend the Complaint, because Caldwell's rights were not clearly established at the time of the campus ban, and more allegations detailing Caldwell's status as basketball player would not change the Court's analysis. See Caldwell v. Univ. of New Mexico Bd. of Regents, No. CIV 20-0003 JB/JFR, 2020 WL 7861330, at \*1 (D.N.M. Dec. 31, 2020)(Browning, J.)(reaching similar conclusions for Defendant Eddie Nuñez, UNM's athletic director, related to the same incident). Accordingly, the Court will grant Torrez' request for judgment on the pleadings, because Caldwell does not state a claim against Torrez upon which relief can be granted.

**IT IS ORDERED** that Defendant Nasha Torrez's Motion for Judgment on the Pleadings,

filed April 29, 2020 (Doc. 43), is granted.



\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

*Counsel:*

Justine Fox-Young  
Justine Fox-Young, P.C.  
Albuquerque, New Mexico

--and--

Paul J. Kennedy  
Kennedy, Hernandez & Associates, P.C.  
Albuquerque, New Mexico

*Attorneys for the Plaintiff*

Patrick J. Hart  
Office of University Counsel, University of New Mexico  
Albuquerque, New Mexico

--and--

Alfred A. Park  
Lawrence M. Marcus  
Park & Associates, L.L.C.  
Albuquerque, New Mexico

*Attorneys for Defendants University of New Mexico Board of Regents and Nasha Torrez*

Alfred A. Park  
Lawrence M. Marcus  
Park & Associates, L.L.C.  
Albuquerque, New Mexico

*Attorneys for Defendant Eddie Nuñez*